

Ombudsman's Determination

Applicant	Ms S
Scheme	South Yorkshire Probation Service
Respondents	Greater Manchester Pension Fund (GMPF)

Outcome

1. I do not uphold Ms S' complaint and no further action is required by GMPF.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms S complains that she is unable to take her pension benefits as a taxable lump sum (**trivial commutation lump sum**) because the value of her pension benefits exceeds the £30,000 limit (**the upper limit**) set by Her Majesty's Revenue and Customs (**HMRC**).
4. GMPF has said that Ms S does not meet the conditions to take her retirement benefits as a trivial commutation lump sum so it cannot permit her request. However, should the upper limit change, Ms S might be able to exchange her pension for a trivial commutation lump sum.

Background information, including submissions from the parties

5. On 1 May 1997, Ms S left active membership of the Scheme and she became a deferred member which meant her pension benefits were preserved for payment at a later date.
6. In mid-2009, Ms S retired and claimed payment of her pension benefits. At that time the capital value of her pension was £30,773.48. It provided her with £7,683.28 as a tax-free lump sum and £1,152.21 as an annual pension.
7. In August 2017, Ms S enquired about taking her pension as a one-off cash lump sum in a process known as trivial commutation.

8. On 1 September 2017, GMPF informed Ms S that she could not exchange her pension for a trivial commutation lump sum because the total value of her pension benefits exceeded the HMRC upper limit.
9. Around March 2018, Ms S appealed GMPF's decision under stage one of its internal dispute resolution procedure (**IDRP**).
10. On 9 May 2018, GMPF issued its stage one IDRP response. It said that:-
 - Ms S was a retired member of a statutory scheme so its rules are determined by Parliament.
 - The rules relevant to her appeal were regulation 49 of the Local Government Pension Scheme (**LGPS**) Regulations 1997 and regulation 4 of the LGPS (Transitional Provisions) Regulations 1997.
 - Paragraph 7(1)(a) to (e) Schedule 29 of the Finance Act 2004 Act (**the 2004 Act**), stipulates that, for payments made on or after 16 September 2016, there are six conditions that a lump sum payment must meet to be classed a trivial commutation lump sum. These are as follows:-
 - the member has not been paid a trivial commutation lump sum previously (from any registered pension scheme), except any earlier payment within the commutation period
 - the lump sum is paid in respect of a defined benefit arrangement or an in-payment money-purchase in-house scheme pension, or both
 - on the nominated date, the value of the member's pension rights do not exceed the commutation limit of £30,000;
 - the lump sum is paid when the member has available lifetime allowance;
 - the lump sum extinguishes the member's entitlement to defined benefits and in-payment money-purchase in-house scheme pensions under the registered pension scheme making the payment; and
 - the lump sum is paid when the member has reached the age of 55 or meets the ill-health condition...or has a protected pension age.

Ms S failed to meet all the criteria because the capital value of her pension exceeded the upper limit of £30,000.

 - The applicable legislation did not allow for any discretion, even where there may be "compassionate reasons."
11. On 5 October 2018, Ms S appealed the stage one IDRP decision. She said that-

- She should have been provided with all of her options as a new retiree. If trivial commutation had been explained to her when she retired, she would have delayed taking her pension until she was eligible for it.
- She was aware of an individual, with a pension valued over the upper limit, who took their pension as a trivial commutation lump sum due to serious financial difficulty.
- It was unclear why her request has been refused simply because she was £773 over the upper limit.
- There was no recent legislation or discussions about trivial commutation and she could not understand why the upper limit that “was set in 2004” had not increased in line with inflation and cost of living.
- HMRC would benefit from the tax paid if she was able to take her pension as a trivial commutation lump sum.
- It was unclear what constituted “compassionate grounds.”
- GMPF should reconsider its decision not to allow her to exchange her pension for a trivial commutation lump sum.

12. On 13 December 2018, GMPF issued its stage two IDR response. It said that:-

- Ms S was not eligible for a trivial commutation lump sum because the capital value of her pension exceeded the upper limit set by HMRC.
- When Ms S retired in 2009, she was not eligible for trivial commutation because the upper limit was one per cent of the lifetime allowance at the time which was £1,750,000.
- After the Spring Budget in 2014, the upper limit increased to £30,000.
- The conditions that had to be met in order for a trivial commutation lump sum to be paid from a defined benefit scheme were very clear about the upper limit. It was likely that the individual Ms S referred to did not take a trivial commutation lump sum from a defined benefit arrangement.
- From April 2015, the Government introduced Freedom and Choice in Pensions to all members of Defined Contribution schemes to flexibly access their pension savings. It was likely the individual Ms S referred to used these rules to take lump sum payments.
- The LGPS rules that apply to Ms S were determined by the date she left active membership of the Scheme which is 1 May 1997. So, the LGPS Regulations 1997 were the relevant legislation.
- Ms S may have misinterpreted the mention of “compassionate grounds” in the stage one IDR response. There are certain regulations in the LGPS that allow for

discretion, "...compassionate reasons for example. However, the decision of whether a trivial commutation lump sum can be paid, or not, is not one of those regulations."

- The Government may look to increase the upper limit in the future and, should this happen, trivial commutation may become possible.

13. GMPF provided its further comments. It said:-

- Ms S claimed that she had suffered £30,000 in financial loss, however, this was not the case. Ms S received £7,683.28 as a tax-free lump sum. She also receives an increasing annual pension of £1,152.51 which has been payable since July 2009 and is payable for the rest of her life.
- Ms S would receive less than £30,000 if she could take her pension as a trivial commutation lump sum because the figure of £30,733.48 was the crystallised value of her pension benefits when she retired in 2009.
- Ms S incorrectly said that the upper limit has been in place since 2004. In 2010, it increased from £17,500 to £18,000. In 2014, it increased to £30,000.

Adjudicator's Opinion

14. Ms S' complaint was considered by one of our Adjudicators who concluded that no further action was required by GMPF. The Adjudicator's findings are summarised below:-

- When Ms S retired in 2009, the value of her pension benefits far exceeded the £17,500 upper limit at the time so this was likely to be the reason that trivial commutation was not discussed with her.
- Ms S cannot take her pension benefits as a trivial commutation lump sum because GMPF must comply with the HMRC rules and the Regulations that govern the Scheme. Ms S does not meet all of the conditions set out in the 2004 Act that must be met for a lump sum payment to be a trivial commutation lump sum.
- Ms S has not suffered a financial loss because she is still entitled to receive her retirement benefits in the Scheme, just not in the manner that she would like.
- GMPF's IDRPs responses made Ms S aware of the Rules and legislation that prevented her from taking a trivial commutation lump sum.
- GMPF provided Ms S with its IDRPs responses within a reasonable timeframe.

15. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S has provided her further comments which do not change the outcome. Ms S has said that:-

- She is willing to donate £773 to charity or the NHS so that the value of her pension no longer exceeds the upper limit.
- The upper limit should have increased since 2014.

I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Ms S for completeness.

Ombudsman's decision

16. Ms S complains that the trivial commutation upper limit has not been increased for six years and, if it had, it is likely she would be entitled to exchange her pension for a trivial commutation lump sum.
17. The Government is responsible for introducing legislative changes in relation to matters such as trivial commutation. It is not within my remit and so I cannot recommend that the upper limit is increased.
18. Ms S suggested that she could donate the amount that causes her to exceed the upper limit, so that she can take her pension as a trivial commutation lump sum. I appreciate Ms S' suggestion, however, Ms S cannot simply donate the "excess amount" so that the value of her benefits falls below the upper limit set by HMRC. She must receive the full value of the benefits accrued under the GMPF in the format required by the Regulations and the restrictions laid down in legislation.
19. GMPF has said that if the limit changes trivial commutation might become an option for Ms S in the future. Until such time, I find that GMPF are correct not to allow Ms S to take her pension as a trivial commutation lump sum.
20. I do not uphold Ms S' complaint.

Anthony Arter

Pensions Ombudsman
6 May 2020